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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER  
AIR TRANSPORTATION  
ANTITRUST LITIGATION**

Civil Case No. 3:07-cv-05634-CRB

MDL No. 1913

**This Document Relates To:**

**ALL ACTIONS**

**PLAINTIFFS' REQUEST FOR LEAVE TO  
FILE SUR-REPLY AND SUR-REPLY IN  
RESPONSE TO OBJECTORS XANADU  
CORP. AND DAVID GOULD'S REPLY IN  
SUPPORT OF MOTION FOR  
RECONSIDERATION**

1                   **PLAINTIFFS' REQUEST FOR LEAVE TO FILE SUR-REPLY**

2                   Concerning supplementary materials, Local Rule 7-3(d) provides, "Once a reply is filed,  
3 no additional memoranda, papers or letters may be filed without prior Court approval" except in  
4 limited circumstances. L.R. 7-3(d). Plaintiffs respectfully request leave to file a sur-reply in  
5 response to Objectors Xanadu Corp. and David Gould's Reply in Support of the Motion for  
6 Reconsideration (ECF No. 1382) ("Reply"). A sur-reply is necessary and appropriate to briefly  
7 address (1) the alleged "additional factual details [that] came to light about the uncashed  
8 checks[,]," (2) the allegation that Class Counsel misrepresented facts to the Court, and (3) the  
9 alleged deficiencies regarding the settlement website (www.airlinesettlement.com). *See,*  
10 *generally*, Reply. If the Court grants leave to file a sur-reply, Plaintiffs request that the Court  
11 consider the sur-reply attached hereto.

12                   Dated: January 23, 2023

Respectfully submitted,

13                   /s/ Elizabeth T. Castillo

/s/ Christopher L. Lebsock

14                   Adam J. Zapala

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15                   Elizabeth T. Castillo

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**PLAINTIFFS' SUR-REPLY**

**I. The Settlement Payment to Corp Xanadu**

The Objectors argue the Court should reconsider its January 19, 2023 Order (ECF No. 1378) (“Order”) because “additional factual details came to light about the uncashed checks.” Reply at 1. Specifically, the Objectors contend that Corp Xanadu’s settlement payment “was returned because Rust Consulting’s system added several redundant lines of text pushing the City, State and Zip to the end making it undeliverable.” *Id.* That is flatly wrong. As detailed in the Declaration of Joel K. Botzet in Support of Plaintiffs’ Opposition to Objectors Xanadu Corp. and David Gould’s Motion for Reconsideration, Rust mailed a check by USPS to Corp Xanadu’s alleged Wilshire Boulevard address on March 17, 2022, which USPS returned as undeliverable with no forwarding address on April 11, 2022. Botzet Decl. ¶ 4 (ECF No. 1375). A true and correct copy of USPS undeliverable check attached as Exhibit 4 to the Botzet Declaration plainly reflects that delivery was attempted but that the recipient was “temporarily away”:

RETURN TO SENDER  
TEMPORARILY AWAY  
UNABLE TO FORWARD

*Id.*, Ex. 4. Furthermore, it is irrelevant whether Corp Xanadu received the inadvertently mailed settlement payment. The point is, as Rust has determined, Corp Xanadu did not establish that it had any qualifying purchases and is not entitled to share in any of the settlement proceeds. Order ¶¶ 2-5.

**II. The Court’s January 19, 2023 Order**

The Objectors also contend that the Court should reconsider its Order because the Order is based on an updated proposed order submitted by Plaintiffs (ECF No. 1377) at the Court’s direction (ECF No. 1376). Specifically, the Objectors maintain that the updated proposed order allegedly includes “distorted information” about Corp Xanadu. Reply at 3. On the contrary, the updated proposed order merely reflects “Rust’s conclusion as to Corp. Xanadu’s claim[.]” as

1 requested by the Court (ECF No. 1376). Rust's conclusion as to Corp Xanadu's claim was based  
2 on Rust's examination of Corp Xanadu's claim over several months, which included a Zoom  
3 interview with Corp Xanadu's CEO, Rich Sutton, on November 1, 2022, and all documents and  
4 information provided by Corp Xanadu by November 30, 2022. Botzet Decl. ¶¶ 5-25, Exs.1-8. The  
5 Botzet Declaration was made under penalty of perjury. *Id.* ¶ 49. Neither Class Counsel nor Rust  
6 made any misrepresentations to the Court—through the updated proposed order or otherwise.

### 7 **III. The Settlement Website**

8 Additionally, the Objectors suggest that the Court should reconsider its January 19, 2023  
9 Order because notice of Plaintiffs' Motion for Secondary Distribution of Remaining Settlement  
10 Funds and Request for Attorneys' Fees and Reimbursement of Expenses through the settlement  
11 website ([www.airlinesettlement.com](http://www.airlinesettlement.com)) was allegedly deficient. Reply at 4-5. Specifically, the  
12 Objectors state that Rust should have also provided notice by email to all claimants. *Id.* at 4.  
13 Neither Objector has standing to raise this objection. As mentioned, *supra*, Objector Corp Xanadu  
14 is not a settlement class member because it did not establish that it had any qualifying purchases.  
15 Order ¶¶ 2-5. Furthermore, while Objector Gould is a settlement class member, he received notice  
16 of Plaintiffs' Motion for Secondary Distribution of Remaining Settlement Funds and Request for  
17 Attorneys' Fees and Reimbursement of Expenses and filed an objection together with Corp  
18 Xanadu (ECF No. 1353). Mr. Gould's speculation that other settlement class members may have  
19 been harmed by inadequate notice is therefore irrelevant.

20 Moreover, as Plaintiffs have indicated before, Rust determined there was no efficiency or  
21 precedent for emailing or mailing motions to claimants when they are available on the settlement  
22 website. Botzet Decl. ¶ 37. The Objectors' assumption that Rust has all the email addresses of the  
23 persons who submitted claims in this case is also wrong; not all claimants provided email  
24 addresses. *Id.* ¶ 35. Additionally, doing what the Objectors suggest would have expended much  
25 of the remaining uncashed settlement funds. *Id.* ¶ 37.

26 //

27 //

1 Dated: January 23, 2023

Respectfully submitted,

2 /s/ Elizabeth T. Castillo

/s/ Christopher L. Lebsack

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